IN THE

Supreme Court of the United States

OCTOBER TERM, 1946.

No. 471

ILLINOIS COMMERCE COMMISSION, ET AL., ETC.,
Petitioners,

vs.

BOARD OF TRADE OF THE CITY OF CHICAGO,
A CORPORATION,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

ANSWER OF BOARD OF TRADE OF THE CITY OF CHICAGO, RESPONDENT.

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OPINIONS BELOW.

The opinion of the District Court (Tr. 220) is not reported. The opinion of the Circuit Court of Appeals (Tr. 242) is reported in 156 F. (2d) 33.

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*We shall refer to Petitioners Illinois Commerce Commission, et al., No. 471 as "Commission," and Petitioners Daniel F. Rice & Co., *et al.*, No. 473 as "Rice," and this respondent files identical answers in No. 471 and 473.

STATEMENT.

The respondent, Board of Trade of the City of Chicago, is a corporation by legislative act of the Illinois State Legislature approved February 18, 1859 (Tr. 28-30). Its activities affect the flow of grain in interstate commerce, and the Congress of the United States has exercised its authority to regulate its activities by legislation commonly known as the Futures Trading Act (An Act of August 24, 1921, c. 86, 42 U. S. Stat. 187), the Grain Futures Act (Act of September 21, 1922, c. 369, 42 U. S. Stat. 998), and lastly the Commodity Exchange Act (Act of June 15, 1936, c. 545, 49 U. S. Stat. 1491, 7 U. S. C. 1-17a), and it operates as a board of trade through its designation as a contract market by the Secretary of Agriculture by virtue of his authority under the Commodity Exchange Act (Tr. 3).

It appears from paragraph 15 of the Complaint filed with the Illinois Commerce Commission (Tr. 17) that the Commission is asked to assume jurisdiction of the rules and regulations of the Board of Trade "*covering its maintenance as a commercial grain exchange,*" and (under the prayer for relief, Tr. 19) to declare inoperative and void such rules and regulations which have not received the prior approval of the Illinois Commerce Commission and to require the Board of Trade "*to adopt and submit for approval,* rules and regulations which are fair, equitable, adequate and specific" as determined by the Illinois Commerce Commission. As we have alleged (Tr. 3), the Board of Trade exists as a commercial grain exchange only by virtue of its designation as a contract market by the United

States Secretary of Agriculture under the authority of the Commodity Exchange Act. It cannot exist otherwise. No state statute may authorize its maintenance.

The interference of the Illinois Commerce Commission sought in Daniel F. Rice & Company's complaint, will not only cause the State to assume control of the Board in its "maintenance as a commercial grain exchange," but will subject it to penalties for failure to comply with orders of the Illinois Commerce Commission, and will require large expenditures of funds in resisting action by the Commission, unless restrained by the Federal Court.

Statements by the Attorney General that the proceedings before the Illinois Commerce Commission, "being merely investigatory, they do not interfere with interstate commerce" are without foundation (Com. Pet., pp. 12-13). Even the statement of the case in the same brief (p. 9) negatives any such conclusion, for it is there said that the petition "prayed an investigation in the premises and the entry of orders * * *."

Petitioners have in no way pointed out any fallacy, misstatement or error in the statement of the Circuit Court of Appeals that is the basis of its decision (Tr. 261), 156 F. (2d) 33 (44):

> "It is plain, so we think, that any rule or regulation promulgated by the Board of Trade relative to its transactions in warehouse receipts must conform to and be consistent with the requirements of the federal authority in connection therewith. Any rule or regulation in conflict with or in excess of such authority would be invalid, and this would be so whether or not it was approved by the Illinois Commission. It is equally plain that any rule or regulation promulgated by the Commission concerning the same subject matter, which conflicted with or exceeded the power vested in the federal authority, would be of no effect. We therefore are of the view that Congress has invaded

> the precise field occupied by the Illinois Commission by reason of § 194 (b) of the Illinois Grain Warehouse Act and has rendered its authority inoperative."

The Commission states (p. 7) that the case is of first impression and "nevertheless the decisions of the Circuit Court of Appeals are probably in conflict with the teachings of this court's decisions most nearly in point," and in the Rice petition it is said (p. 5): "This is a case of first impression. No court has previously passed upon the validity of state regulation of rules of boards of trade in the face of claimed repugnance to the Commodity Exchange Act."

Board of Trade v. *Olsen*, 262 U. S. 1, *Board of Trade* v. *Wallace*, 67 F. (2d) 402 (certiorari denied by this court), and the opinion of this court in *Board of Trade* v. *Christie Grain & Stock Co.*, 198 U. S. 236, show that the very nature of the functions of the Board of Trade precludes any real probability of conflict between the decision of the Circuit Court of Appeals in this case and decisions of this court.

The rules of the Board of Trade which Rice refers to (p. 5) as establishing warehousing standards and practices do no such thing: they only relate to the "regularity"* of those warehouses from which grain may be delivered on futures contracts. They relate entirely to regularity for the purpose of delivery on futures contracts. Under Sec. 5a (7) of the Commodity Exchange Act, the warehouse receipts of a federally licensed warehouse must be accepted in satisfaction of futures contracts if the ware-

* Rule 281. * * * deliveries shall be made by the delivery of registered warehouse receipts issued by warehouses which have been declared regular by the Board. The Board by regulation may prescribe the conditions upon which warehouses may be declared regular, and also conditions upon which warehouse receipts issued by regular warehouses shall be deliverable (Tr. 96).

house meets with reasonable requirements as to location, accessibility and suitability. This is recognized by Regulation 1829 of the Board of Trade (Tr. 180-181). Rice wants the Illinois Commerce Commission to order the Board of Trade to place conditions upon the use of receipts of Federal warehouses to satisfy futures contracts.

ARGUMENT.

I.

The District Court Had Jurisdiction Because (1) the Right to Relief Depends on the Construction or Application of an Act of Congress; and (2) the Case Arises Under a Federal Law Regulating Interstate Commerce; and (3) the Commodity Exchange Act Is a Valid Exercise of the Power of Congress Over Interstate Commerce.

(1) The District Court had jurisdiction since the right to relief depends on the construction or application of an act of Congress (subdivision 1a, § 24 of the Judicial Code, 28 U. S. C. A. § 41 (1) (a)).

The pleading adequately discloses a present controversy dependent for its outcome upon the construction of a federal statute. *Peyton* v. *Railway Express Agency, Inc.*, 316 U. S. 350, 353, and cases cited therein.

(2) The District Court had jurisdiction since the suit arose under a law regulating interstate commerce (subdivision 8, § 24 of the Judicial Code, 28 U. S. C. A. § 41 (8)).

The Judicial Code conferred jurisdiction upon the District Court. *Mulford* v. *Smith*, 307 U. S. 38, 46.

(3) The Commodity Exchange Act is a valid exercise of the power of Congress over interstate commerce.

In *Board of Trade* v. *Olsen, United States Attorney*, 262 U. S. 1, in holding that the Grain Futures Act was not unconstitutional, said (33-36):

> "The Chicago Board of Trade is the greatest grain market in the world. *Chicago Board of Trade* v. *United States*, 246 U. S. 231, 235. • • •

"It is impossible to distinguish the case at bar, so far as it concerns the cash grain, the sales to arrive, and the grain actually delivered in fulfillment of future contracts, from the current of stock shipments declared to be interstate commerce in *Stafford* v. *Wallace*, 258 U. S. 495.

* * * * * *

"The sales on the Chicago Board of Trade are just as indispensable to the continuity of the flow of wheat from the West to the mills and distributing points of the East and Europe, as are the Chicago sales of cattle to the flow of stock toward the feeding places and slaughter and packing houses of the East.

* * * * * *

The Court further said (40):

"In view of the actual interstate dealings in cash sales of grain on the exchange, and the effect of the conduct of the sales of futures upon interstate commerce, we find no difficulty under *Munn* v. *Illinois*, 94 U. S. 113, 133, and *Stafford* v. *Wallace*, *supra*, in concluding that the *Chicago Board of Trade is engaged in a business affected with a public national interest and is subject to national regulation as such.*"

In a late case in Illinois, *Albers* v. *Lamson*, 380 Ill. 35, the court referred to *Miller* v. *Sincere*, 273 Ill. 194, and then said (41-42):

"After this decision the Congress of the United States found it appropriate to further define national public policy in that field of interstate commerce wherein the Federal government is supreme. In 1934 a comprehensive act was passed known as 'Securities Exchange Act of 1934.' (U. S. C. A. Tit. 15, 78a, *et seq.*) This act followed the Securities act of 1933. (U. S. C. A. Tit. 15 77a, *et seq.*) There was also enacted by Congress the Commodity Exchange act. (U. S. C. A. Tit. 7, sec. 1, *et seq.*) * * * *That the Securities and Exchange Commissions, the boards of trade and other similar instrumentalities are engaged in interstate commerce is not a debatable question.*" (Italics ours.)

It thus appears that the Illinois Supreme Court, as well as this Court, has recognized the Commodity Exchange Act as legislation regarding instrumentalities engaged in interstate commerce.

II.

The Johnson Act Amendment of 1934 Is Not Applicable to This Case.

The Johnson Act Amendment (§ 24 (1) of the Judicial Code; 28 U. S. C. A. § 41 (1)) has no application to this case because:

(a) *It is not claimed that the assumption of jurisdiction by the Commission is repugnant to the Constitution of the United States, and it is not based on Diversity of Citizenship.*

Respondent does not contend that the stat statute is unconstitutional. We contend that the state statute as interpreted and applied by the Commission conflicts with the Commodity Exchange Act.

In *Ex parte Bransford*, 310 U. S. 354, this Court said (358-359):

> "The declaration of the supremacy clause gives superiority to valid federal acts over conflicting state statutes but this superiority for present purposes involves merely the construction of an act of Congress, not the constitutionality of the state enactment."

Again, in the case of *Ex parte Buder*, 271 U. S. 461 (1926) this Court said (466-467):

> *"The claim that the tax is void rests, not upon a contention that the state statute under which it was laid is unconstitutional, but upon a contention that the statute is no longer in force."*

See, also, *Cloverleaf Butter Co. v. Patterson*, 116 F. (2d) 227; 315 U. S. 148.

Because of the foregoing, we believe the Johnson Act has no application. Counsel claim in effect that the Johnson Act has application, even without diversity of citizenship or repugnance of the order to the Constitution, where the order involved "(3) has been made after reasonable notice and hearing and where a plain, speedy, and efficient remedy may be had at law or in equity in the courts of such state."

(b) *It was not necessary for the Board of Trade to exhaust state remedies, either by petition for rehearing or by appeals or writs of error through all of the courts of Illinois.*

It was argued in the trial in the Circuit Court of Appeals under this point that the respondent should have applied to the Commission for a rehearing. It is intimated that no Federal injunction could be obtained until the Board of Trade had sought review of the Commission order in the Supreme Court of Illinois.

(1) No petition for rehearing was necessary.

The motion before the Commission was to dismiss on the ground that the Commission was without jurisdiction of the subject matter.

The order on the motion (Tr. 6 of our Complaint) notified the Board of Trade that its motion was denied and added: "You are hereby further notified that the Commission has set the above case for hearing at the office of the Commission * * * on October 24, 1944."

No opinion was furnished. What would constitute a Petition for Rehearing? Nothing more than to refile the briefs and re-argue the case. Certainly the order of the Commission in the manner it was entered showed no findings that would serve as a basis for an application for a rehearing.

Although Section 71 of the Public Utility Act, referred to in the Commission's brief (p. 13), provides for an application for rehearing within thirty days after the service of an order and the Commission has twenty days thereafter to grant or deny the application, the order was entered on October 24th. Surely the Commission did not propose to entertain or expect any Petition for Rehearing, when such petition would not have been due until after the date the cause had been set for trial.

In *Prendergast* v. *New York Telephone Company*, 262 U. S. 43, in which the court held that a petition for rehearing before the Commission before appealing to the Federal Court was unnecessary, it was said (49):

> "Here the Commission did not suggest in its answer that it perceived any ground upon which it would have granted a rehearing, if an application had been made, but, on the contrary, maintained the correctness of its orders in all respects. Manifestly under such circumstances the injunction should not have been denied merely because application had not been made to the Commission for a rehearing."

The same reasoning applies here on three grounds: (1) the answer of the Commission in this suit does not suggest in any respect that the Attorney General perceived any ground upon which the Commission would have granted a rehearing; and (2) the order denying the Board of Trade's motion to be dismissed because the Commission lacked jurisdiction stated no grounds whatsoever for the order and surely gave no indication that if an application had been made the Commission would have given it any consideration; (3) *the Commission set the case for trial fourteen days after the order and thus did not allow the requisite thirty days for filing the petition for rehearing.* The order did not comply with the statute (Section 65 of the Public Utilities Act) which provides:

"At the conclusion of such hearing the commission

> shall make and render findings concerning the subject-matter and facts inquired into and entered its order based thereon."

The order appealed from simply denied the Board of Trade's motion. No opportunity for a petition for rehearing was allowed by the Commission; its order was in such form that no reason for such petition appeared.

In a decision handed down November 5, 1945, *Levers* v. *Anderson*, 326 U. S. 219, 222, this Court has followed its ruling in *U. S.* v. *Abilene & Southern Ry. Co.*, 265 U. S. 274 and *Prendergast* v. *New York Telephone Company*, 262 U. S. 43.

The case of *Natural Gas Company* v. *Slattery*, 302 U. S. 300, mainly relied upon by the Commission (p. 20) is not in point. In the *Slattery* case the Commission ordered a non-party, Natural Gas Company, to produce its books and records. The Gas Company, without ever appearing before the Commission to resist the scope of the order, sought an injunction in the Federal court, contending that the order would require it to expend large sums of money in preparing the information. The Supreme Court treated the order to produce as if it were a subpoena and pointed out that all citizens are required to appear and give evidence. The Supreme Court then said it would not enjoin the scope of the order because Natural Gas had never brought to the attention of the Commission its contentions that the order was too broad. The conclusion of the *Slattery* case supports our position and is as follows (311):

> "The extent to which a federal court may rightly relax the rule *where the order of the administrative body is assailed in its entirety, rests in the sound discretion which guides exercise of equity jurisdiction. Hollis* v. *Kutz, supra; United States* v. *Abilene & Southern Ry. Co.*, 265 U. S. 274, 282; cf. *United States* v. *Sing Tuck, supra.* But there are cogent reasons for requiring resort in the first instance to the ad-

> ministrative tribunal when the particular method by which it has chosen to exercise authority, a matter peculiarly within its competence, is also under attack, for there is the possibility of removal of these issues from the case by modification of its order. Here the commission had authority to pass upon every question raised by the appellant and was able to modify the order. In such circumstances the trial court is free to withhold its aid entirely until administrative remedies have been exhausted." (Italics ours.)

The *Slattery* case does not represent a denial of federal relief because a rehearing was not applied for. It is a case of denial of federal relief because the non-party, Natural Gas Company, had never presented its contentions to the Commission at all. Naturally, it was held that the Federal courts would not consider contentions that had never been made before the Commission at all.

But when the Commission has heard evidence and has decided the matter, the Federal courts will not deny relief merely because the complaining party has not elected to avail himself before the administrative tribunal of a purely permissive right to petition there for rehearing.

Counsel infer (p. 14 Commission's brief) that the suit was to enjoin an order of administrative board or commission of a state which affects rights chargeable by a public utility and that interstate commerce was not involved. We have already pointed out that interstate commerce was involved. We also point out that it is not claimed that the order of the Commission affects rights chargeable by a public utility. The Board of Trade is a grain market "engaged in a business affected with a public national interest and is subject to national regulation as such" (and is not a public utility under the laws of Illinois); nor are the service or other charges of the Board of Trade involved, and the Board does not own or operate any warehouses.

Counsel repeatedly states that all that was sought before the Illinois Commerce Commission was "a mere investigation." The prayer for relief in the complaint filed before the Commission (Tr. 18-19) conclusively contradicts such assertion.

(2) Appeals and writs of error through the state courts were unnecessary.

The Board of Trade did not have to pursue its rights all through the state courts, as appears from the language in *Lane* v. *Wilson*, 307 U. S. 268, the court saying (274-275):

> "The other preliminary objection to the maintenance of this action is likewise untenable. To vindicate his present grievance the plaintiff did not have to pursue whatever remedy may have been open to him in the state courts. Normally, the state legislative process, sometimes exercised through administrative powers conferred on state courts, must be completed before resort to the Federal courts can be had. *Prentis* v. *Atlantic Coast Line Co.*, 211 U. S. 210. But the state procedure open for one in the plaintiff's situation (§ 5654) has all the indicia of a conventional judicial proceeding and does not confer upon the Oklahoma courts any of the discretionary or initiatory functions that are characteristic of administrative agencies. See Section 1 of Article IV of the Oklahoma Constitution; *Oklahoma Cotton Ginners' Assn.* v. *State*, 174 Okla. 243; 51 P. 2d 327. Barring only exceptional circumstances, see *e. g. Gilchrist* v. *Interborough Rapid Transit Co.*, 279 U. S. 159, or explicit statutory requirements, *e. g.* 48 Stat. 775; 50 Stat. 738; 28 U. S. C. § 41 (1), resort to a Federal court may be had without first exhausting the judicial remedies of state courts. *Bacon* v. *Rutland R. Co.*, 232 U. S. 134; *Pacific Tel. & Tel. Co.* v. *Kuykendall*, 265 U. S. 196."

III.

When Congress Assumed Complete Regulatory and Supervisory Means of Control Over Boards of Trade, State Regulation Was Superseded and Excluded.

As said in *Pennsylvania Railroad Company* v. *Public Service Commission*, 250 U. S. 566 (569):

> "* * * when the United States has exercised its exclusive power over interstate commerce so far as to take possession of the field, the States no more can supplement its requirements than they can annul them. *Southern Ry. Co.* v. *Railroad Commission of Indiana*, 236 U. S. 439, 446; *Charleston & Western Carolina Ry. Co.* v. *Varnville Furniture Co.*, 237 U. S. 597, 604; *New York Central R. R. Co.* v. *Winfield*, 244 U. S. 147."

Again, in *Cloverleaf Co.* v. *Patterson*, 315 U. S. 148, the Supreme Court in 1941 said (155-156):

> "Exclusive federal regulation may arise, also, from the exercise of the power of Congress over interstate commerce where, in the absence of Congressional action, the states may themselves legislate. It has long been recognized that, in those fields of commerce where national uniformity is not essential, either the state or federal government may act. *Willson* v. *Black-bird Creek Marsh Co.*, 2 Pet. 245; *California* v. *Thompson*, 313 U. S. 109, 114. Where this power to legislate exists, it often happens that there is only a partial exercise of that power by the federal government. In such cases the state may legislate freely upon those phases of the commerce which are left unregulated by the nation. *But where the United States exercises its power of legislation so as to conflict with a regulation of the state, either specifically or by implication, the state legislation becomes inoperative and the federal legislation exclusive in its application.*"

See, also, *Napier* v. *Atlantic Coast Line R. R. Co.*, 272 U. S. 605, *Hill et al.* v. *Florida*, 65 S. Ct. 1373 and *Southern Pacific Company* v. *Arizona*, 65 S. Ct. 1515.

IV.

The Commodity Exchange Act Exclusively Occupies the Field of Regulation of the Board of Trade and the Illinois Commerce Commission Is Without Power to Attempt to Regulate the Board of Trade.

It is urged by counsel that the Commodity Exchange Act is not comprehensive in scope and that the federal statute seeks only to control excessive speculation and manipulation in commodity exchanges.

The Appendix of Commission's brief (p. 75) contains only a few sections of the Commodity Exchange Act, which are referred to as "sections dealing with boards of trade." The entire Act must be followed by the Board of Trade and its members. This Court cannot construe the Act by reference only to a few sections referred to by counsel. As said in *Savage* v. *Jones*, 225 U. S. 501, 533:

> "For when the question is whether a Federal act overrides a state law, the entire scheme of the statute must of course be considered and that which needs must be implied is of no less force than that which is expressed. If the purpose of the act cannot otherwise be accomplished—if its operation within its chosen field else must be frustrated and its provisions be refused their natural effect—the state law must yield to the regulation of Congress within the sphere of its delegated power."

The Act does not seek only to control excessive speculation and manipulation in commodity exchanges and with respect to futures only. It is said in House Report No. 421 on H. R. 6772 in the President's message to Congress in 1934 accompanying the Commodity Exchange Bill:

> "The fundamental purpose of the measure is to insure fair practice and honest dealing on the commodity exchanges and to provide a measure of control over

> those forms of speculative activity which too often demoralize the markets to the injury of producers and consumers and the exchanges themselves. *The bill has as another objective the restoration of the primary function of the exchanges which is to furnish a market for the commodities themselves.*" (Italics ours.)

Section 5a (7) of the Act provides that each contract market shall require that receipts issued under the United States Warehouse Act shall be accepted in satisfaction of any futures contract "notwithstanding that the warehouseman issuing such receipts is not also licensed as a warehouseman under the laws of any State or enjoys other or different privileges than under State law." To enforce this, Regulation 1829 was passed (Tr. 180-181).

Section 5a (6) provides that each contract market shall require that all contracts of sale of any commodity for future delivery shall provide for the delivery of commodities of grades conforming to United States standards. Rule 295 (Tr. 68) was passed to comply with this section.

Section 5 (d) provides that the Secretary of Agriculture is authorized to designate any board as a contract market "when the governing board thereof provides for the prevention of manipulation of prices and the cornering of any commodity by the dealers or operators upon such board." This does not refer to futures alone and was a prerequisite of the board being designated a contract market. It is covered by Rules 82 (Tr. 46) and 150 (Tr. 61) and other rules. Moreover, the entire Commodity Exchange Act is a part of the rules of the Board of Trade. Rule 603 (Tr. 118) and Regulation 1828 (Tr. 180).

It seems absurd to say, as urged by counsel, that the Act does not provide for affirmative regulation, for if the rules do not comply with the Commodity Exchange Act, the Secretary of Agriculture, under Section 5b, shall have cause for suspending the Board of Trade as a contract market.

Counsel say (p. 26) that the limited and circumscribed character of the Commodity Exchange Act and the underlying congressional intent were authoritatively discussed in *Dickson* v. *Uhlmann Grain Co.*, 288 U. S. 188. That case was with respect to the Grain Futures Act, but nevertheless the case does not support counsel's contention when examined. That case did not concern a contract made on the Board between its members, but a contract between members and non-member customers. In *Dickson* v. *Uhlmann Grain Co.*, 288 U. S. 188, it was pointed out (193):

> "There is no suggestion that these contracts violated the law of the place where the exchange was situated. It may be assumed that they were valid as between the Uhlmann Grain Company and its fellow members of the exchanges."

It was then pointed out that there were two distinct agreements, and while the agreement between the principals on the exchange was legal and proper, that between the customer and one of the principals might be void under Missouri law. The court said further (194):

> "If, as Dickson contends, and the trial court found, Dickson's agreement did not contemplate the execution of transactions on the exchange in his behalf, clearly the defense of illegality is governed by the law of Missouri, unless that law has been superseded by The Grain Futures Act."

The Missouri Act applied not to the futures trading on the exchange, but to an agreement existing separate from the transaction occurring on the exchange.

Likewise, it is said in the *Dickson* case (199):

> "The Missouri law is in no way inconsistent with the provisions of the federal act. It does not purport to legalize transactions which the federal act has made illegal. *It does not prescribe regulations for exchanges.*"

State v. *Christopher*, 318 Mo. 225, 2 S. W. (2d) 621, (cited Commission's brief, p. 27) is not applicable, for in that case it is specifically stated (630):

> "The transactions here occurred in Sedalia, which was not a designated contract market. It was not a place permitted by the Grain Futures Act, nor was it a place forbidden by that act. The conduct of such a place was not covered by any of the terms of the act. It was wholly within the jurisdiction of the state to prevent the maintenance of such a place."

The statute is comprehensive in scope and it does provide affirmative regulation, as an examination of it will show. Under the Act on numerous occasions the Board has been required to pass rules and regulations. See, for instance, Regulations 1829 and 1832 (Tr. 180-181).

As to Section 12 and the provision that "The Secretary of Agriculture may cooperate with any department or agency of the Government, any State, * * * or political subdivision thereof, * * *," the context of the quotation from *United Brokerage Co.* v. *Jensen*, 322 U. S. 202, 209, shows that the phrase lacked application to the situation in this case. Here the Board of Trade of the city could not operate as a contract market except by and under the Commodity Exchange Act, but nevertheless the State of Illinois attempted to exercise jurisdiction over the Board of Trade by requiring it to pass rules governing its operation as a contract market as ordered by the Illinois Commerce Commission.

Counsel state (p. 29) that:

> "The Commodity Exchange Act does not require any rule or regulation of the Board of Trade to be submitted to the Secretary of Agriculture for his approval."

But in *Board of Trade of the City of Chicago* v. *Wallace*, 67 F. (2d) 402, the Board of Trade's designation as a contract market had been ordered suspended for sixty days by the Commission authorized under the Grain Futures

Act because of rules it then had in effect. Under Section 4a (1) of the Act the board has to pass rules making effective the limits set by the Secretary of Agriculture on the amount of trading, such as Regulation 1832, etc. Moreover, the Board of Trade is prohibited by Section 5a(6) from making any rule permitting deliveries of commodities at grades other than conforming to the United States standard, and in 5a(7) from passing any rule prohibiting the acceptance in satisfaction of futures contracts of receipts of federally licensed warehouses (even "notwithstanding that the warehouseman issuing such receipts is not also licensed as a warehouseman under the laws of any state").

Sections 4b and 4c of the Commodity Exchange Act declare it unlawful for any member of a contract market to use the market to cheat or defraud, etc., and Section 4c prohibits a wash sale, cross trade, fictitious sale, *et al.*, and the conclusion of clause (c) is: "Nothing in this section or section 4b shall be construed to impair any state law applicable to any transaction enumerated or described in such sections." These two sections emphasize that Congress has taken complete control of the contract market. They only permit the application of state law to any of the above transactions, so that a violator of those sections may be prosecuted under state law if applicable, as well as subject to the penalties of the Commodity Exchange Act if the above sections are violated.

The prohibition of state action in other respects is to be inferred when Congress states when state action may take place.*

As this answer is about to be filed, we were served with

*"It is well settled that an exception in a statute • • • excludes all other exceptions." 25 R. C. L. 983. "Provisos are construed as affecting the paragraph to which they are annexed." *Spring* v. *Olney*, 78 Ill. 101, 105; *Bass* v. *B. & O. T. R. Co.*, 142 F. (2d) 776, 778. "No further exceptions may be read into the act." *People* v. *Deep Rock Oil Co.*, 343 Ill. 388, 401.

a brief filed on behalf of the National Association of Railroad and Utilities Commissioners as *amicus curiae* in support of the petition for writ of certiorari. We note that John D. Biggs, one of the petitioners, and Chairman of the Illinois Commerce Commission, is also President of that Association. We note in this petition that the second quotation on page 29 from *Board of Trade* v. *Olsen* is so garbled as to be a misstatement of the actual quotation, as a reference to the case will show. This petition has been fully answered in the reply to the petitioners, the Illinois Commerce Commission and Rice.

Conclusion.

For the reasons stated, we respectfully submit that the petitions filed clearly failed to state any tenable ground for granting the writ of certiorari: The petitioners have failed to show any error in the decision of the Circuit Court of Appeals. There being no error shown the admission that the questions are of first impression, refutes the assertion that unnamed "decisions of the Circuit Court of Appeals are probably in conflict with the teachings of this court's decisions most nearly in point." The public interest will not be promoted by the granting of the petition.

Respectfully submitted,

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